

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED
FEB 26 2009
U.S. DISTRICT COURT
ELKINS WV 26241

TYWAUN TRAMEL COAKLEY,

Petitioner,

v.

Civil Action No. 2:08 CV 105
(Maxwell)

GEORGE TRENT,

Respondent.

ORDER

It will be remembered that the above-styled civil action was instituted on October 3, 2008, when the *pro se* Petitioner, Tywaun Tramel Coakley, filed a Petition under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* by a Person in State Custody.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation pursuant to Rules 83.13, *et seq.*, of the Local Rules of Prisoner Litigation Procedure.

On October 28, 2008, Magistrate Judge Kaull issued an Opinion/Report And Recommendation, wherein he recommended that the Petitioner's § 2254 Petition be denied and dismissed without prejudice in light of the fact that the Petitioner seeks to challenge pending state criminal charges and the fact that his claims are, accordingly, barred by the abstention doctrine and the principles of exhaustion and comity.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the parties with ten days from the date he was served with a copy of said Opinion/Report And Recommendation in which to file objections thereto and advised

the Petitioner that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

The Court's review of the docket in the above-styled civil action has revealed that, to date, no objections to Magistrate Judge Kaull's October 28, 2008, Opinion/Report And Recommendation have been filed.

Upon consideration of Magistrate Judge Kaull's October 28, 2008, Opinion/Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on October 28, 2008 (Docket No. 7), be, and the same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* by a Person in State Custody (Docket No. 1), be, and the same is hereby, **DENIED** and **DISMISSED without prejudice** in light of the fact that the Petitioner seeks to challenge pending state criminal charges and the fact that his claims are, accordingly, barred by the abstention doctrine and the principles of exhaustion and comity. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

¹The failure of a party to file an objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the *pro se* Petitioner and to any counsel of record herein.

ENTER: February 26th, 2009



United States District Judge